

Message

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Subject: FYI Only: Water articles in the Press

States urge Ohio district court to block Obama-era CWA rule enforcement

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GOP-led states challenging the 2015 Clean Water Act (CWA) jurisdiction rule are calling on a federal district court in Ohio to quickly block enforcement of the standard within the states' borders despite arguments to the contrary from the Trump administration, Democratic states and environmentalists, on both procedural and substantive grounds.

The Aug. 6 brief by the states of Ohio, Michigan and Tennessee argues that none of their opponents in the case now pending in the U.S. District Court for the Southern District of Ohio have raised a credible defense for the Obama-era CWA rule, and therefore the court should grant their request for an injunction against it.

"With preliminary injunction briefing here now concluded, the specific critiques of the Rule's overreach as set forth by Ohio, Michigan, and Tennessee are barely contested and are in no way rebutted," the states say.

The three states suing over the CWA rule in *Ohio, et al., v. EPA, et al.*, are among a host of state and industry plaintiffs seeking court orders that would forbid any enforcement of the Obama administration's standard for determining when waters are subject to the law, even if it comes back into force despite EPA and the Army Corps of Engineers delaying its "applicability date" until 2020.

Even though the agencies are planning to repeal the rule -- with comments on a "supplemental" proposal due Aug. 13 -- the Trump administration has opposed any new judicial stay on enforcement, arguing that the delay means there is no "imminent" risk of harm to states or property owners.

Meanwhile, environmentalists and Democratic states have filed *amicus* briefs in the Ohio case arguing that there is no reason to grant an injunction because the rule is lawful, continuing their defenses of the Obama-era policy on its merits.

But the three states say neither side has effectively countered its claims that the 2015 rule violates landmark Supreme Court decisions on which smaller or isolated waters can be subject to the CWA.

For instance, it says environmentalists' focus on the science underlying the rule's coverage of smaller waters within the same floodplain does not "attempt to explain, for example, how such automatic,

categorical coverage comports with the Supreme Court's repeated determinations that Congress did not intend to reach 'nonnavigable, isolated, intrastate waters.'"

And it touts the 2015 order from the U.S. Court of Appeals for the 6th Circuit that stayed the Obama-era rule nationwide. The 6th Circuit oversees federal courts in Ohio, and while the Supreme Court vacated the nationwide stay, it did so because it agreed with challengers -- including the three states suing in Ohio -- that any case over the rule should begin in district court and not go straight to the appellate level.

"Every court to have assessed the merits of the 2015 Rule, including the Sixth Circuit, has found it likely illegal, and the opposition briefs only serve to demonstrate further that Ohio, Michigan, and Tennessee have an overwhelming likelihood of success on the merits. . . . [T]he Sixth Circuit's ruling was set aside not because of its assessment of the merits but because the States were right that initial jurisdiction lies here," the states' new brief says.

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OFFICIALS TO VISIT ALGAE BLOOMS

Florida's toxic algae blooms are on the radar of officials from EPA, Interior Department and Corps of Engineers, who will visit the sites of the blooms next week, Rep. [Francis Rooney](#) announced Thursday. The visit could be the first step in a government disaster response, following [Rooney's request](#) to President Donald Trump seeking a major disaster declaration over the blooms that have devastated marine life and the state's tourist economy. Rooney said the in-person assessment is "critical to understanding the urgency of providing resources to solve the immediate needs of our community."

GREENWIRE

EPA re-evaluates Wash. standards after petition

Meeting an industry request, EPA has announced a review of water quality standards it approved for Washington state.

The standards, which were set in November 2016, relate in part to how much fish people consume. EPA approved parts of the state's proposed plan, but it strengthened many of the proposed limits.

David Ross, assistant administrator for EPA's Office of Water, wrote in a letter Friday to petitioner Utility Water Act Group that the agency will reconsider the rules.

"Some issues raised in the petition warrant additional review," EPA spokesman Michael Abboud said in a statement.

The rules were finalized after years of debate. Native American tribes and environmental groups wanted stricter standards that would decrease water pollution and protect people who consume fish.

Businesses said the rules could cost billions of dollars and would provide minimal benefit to the environment.

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Water Utilities Seek EPA Focus On Research, Source Control To Address PFAS

Entire Article: <https://insideepa.com/daily-news/water-utilities-seek-epa-focus-research-source-control-address-pfas>

Wastewater utilities are urging EPA to focus its work on perfluorinated chemicals on research to better understand the fate, transport and toxicity of the chemicals and then to use “heightened source control efforts and certain, specifically tailored regulatory standards,” to remove the constituents from the environment.

In [July 20 comments](#) to EPA on per- and polyfluoroalkyl substances (PFAS), the National Association of Clean Water Agencies (NACWA) says local, state and federal efforts to address PFAS contamination are already impacting utilities as they seek to comply with Clean Water Act requirements.

“These efforts could ultimately have major impacts on wastewater treatment operations and the way clean water utilities manage their biosolids for decades to come,” the comments say.

NACWA filed its comments in response to EPA's request for input as part of its continuation of its PFAS national leadership summit and as it decides on its strategy for addressing the class of chemicals.

The group, which represents municipal wastewater treatment utilities, says that as analytical techniques become more advanced and can detect PFAS at exceedingly low levels, EPA and state regulators need “to carefully consider and balance how the mere presence of PFAS in the environment relates to actual risks.”

While there is ample peer-reviewed scientific literature discussing PFAS occurrence, characteristics and behavior, many pivotal questions remain, and the answers are needed to inform EPA's action plan and any regulatory pathway, NACWA says.

“Generally, not only is more peer-reviewed research on PFAS necessary, but research that is specifically tailored to better understanding PFAS and the similarly related chemical constituents, including their fate, transport, and toxicity in the environment, the exposure routes of these chemicals and the risks associated, consistency in detecting these ultratrace levels, and bioaccumulation in the food web among others,” NACWA says.

“This is where EPA should work to support and/or conduct research to develop the limited information we currently have as well as help to standardize the approaches used nationwide,” the group adds.

With as many as 4,500 chemicals in the PFAS class, the substances, known for their non-stick qualities, have been used in many consumer and industrial applications. But their occurrence in water systems has alarmed communities, prompting a push by lawmakers and the public for a regulatory response.

Before he resigned, former EPA Administrator Scott Pruitt announced several actions to address the substances, including making a determination on whether to set enforceable drinking water standards for two of the most common PFAS and regulating the substances under the Superfund program, though officials and many citizen groups are pressing the agency to act quickly and aggressively.

E&E NEWS

Trump admin moves to let states handle permitting

The Army Corps of Engineers moved today to let states and tribes administer Clean Water Act permitting for dredge-and-fill projects in waterways and wetlands.

The Army Corps issued a memorandum encouraging states and tribes to "take an active role in the permitting of dredge and fill operations" as allowed by Section 404(g) of the Clean Water Act.

"This action supports this administration's dedication to infrastructure by providing states and tribes the clarity they need to better balance their environmental protection mission with their economic development goals," Army Corps chief R.D. James said in a statement.

EPA Assistant Administrator David Ross said in a press call that his agency would review permitting standards proposed by states to make sure they are at least equal to federal standards.

More than 15 states have expressed interest in taking over the permitting, the Army Corps and EPA said. New Jersey and Michigan already have that authority.

The memorandum doesn't affect the scope of "waters of the United States" under the Clean Water Act, the Army Corps said. The document addresses only the division of responsibility between the corps and a state or tribe that assumes the Section 404(g) program.

The Trump administration has proposed a rule that would define what waterways or wetlands are provided Clean Water Act protection (Greenwire, June 15).

Under Section 404(c) of the Clean Water Act, the Army Corps retains permitting authority for infrastructure projects like highways, airports, dam construction and mining operations, and authority over waters used for interstate transport.

In June, then-EPA Administrator Scott Pruitt moved to restrict EPA's ability to veto Army Corps permits if the agenc

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Trump admin encourages states to take over water permitting

The Army Corps of Engineers and EPA are encouraging states to take over their controversial Clean Water Act permitting program and are boosting their process for allowing them to do so.

The process of obtaining a dredge-and-fill permit can be one of the most time consuming and expensive aspects of major projects for industries such as mining, homebuilding and oil and gas. The Trump administration says its goal is to streamline that process, allowing states to be one-stop shops by assuming responsibility for implementing that part of the Clean Water Act.

A new memo from R.D. James, the top political official overseeing the Army Corps, marks the first step in that process. James outlined a narrow interpretation of the Clean Water Act's requirement for the federal government to retain oversight of waterways used for interstate navigation, a move that would allow states to assume control of over most wetlands and streams within their boundaries. The issue is entirely separate from the question of which waterways are protected under the Clean Water Act — the fight over the definition of Waters of the U.S.

EPA, which holds ultimate oversight of the 404 program, is also updating its regulations for how the program can be taken over by the states, David Ross, its top water official, told reporters on a conference call Tuesday.

More than 15 states have approached the administration with interest in taking over the program, said Alex Herrgott of the White House Council on Environmental Quality.

"This is an administrative change that is harmonizing our coordination with states," Herrgott said of the Army Corps memo. "There are no compromises to existing environmental protections."

Florida, with the support of its state Legislature, has been moving to assume the program, and other states are also beginning to lay the groundwork.

While the Clean Water Act allows states to take over the dredge-and-fill program for most waters, only two states — Michigan and New Jersey — have so far done so since the law was enacted in 1972. By comparison, more than 40 states have taken over a separate permitting program for discharges from factories and wastewater treatment plants.

But Herrgott said it would be up to states to find money within their budgets to take over the new program. The Trump administration has previously moved to cut such federal grants to states.

In the past, states have decided against taking over the program when they realized how much it would cost to take over such a large and complicated effort with little support from the federal government.

"When it becomes a question of funding, it becomes a question of priorities at the state level of reducing project times," Herrgott said.

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CITY GOES TO COURT OVER PFAS

The toxic nonstick chemicals known as PFAS that have been popping up in water supplies across the country will be the focus of a lawsuit sought by the New York city of Newburgh. The city filed a federal lawsuit Monday over the contamination in its own water supply in the U.S. District Court of the Southern District of New York. The suit, the city said, seeks to require 23 defendants to clean up the watershed contamination and pay for the supply of clean water needed until the contamination is gone. The defendants range from those who have manufactured or sold the chemicals to those who owned and operated the Stewart Air National Guard Base and Stewart International Airport, where the contamination originated. The lawsuit alleges the defendants' use of the "aqueous film forming foam" resulted in the spread of 12 different types of PFAS chemicals within Washington Lake, the city's primary water supply.

Backing EPA Panel, Corps Eases States' Ability To Assume CWA 404 Powers

Entire Article: <https://insideepa.com/daily-news/backing-epa-panel-corps-eases-states-ability-assume-cwa-404-powers>

The Army Corps of Engineers has issued new guidance aimed at encouraging states to assume Clean Water Act (CWA) dredge-and-fill permitting authority, a measure that narrows the scope of waters the Corps would oversee and agrees with an EPA advisory panel finding that states can adequately protect the environment.

The guidance, contained in a July 30 memorandum and announced Aug. 7, endorses the majority recommendations from an EPA advisory panel that the Corps should retain authority over most waters covered by the Rivers and Harbors Act (RHA) section 10, which provides the Corps' historic authority over navigable waters, but that states could issue permits for nearly all other navigable waters, including some waters the Corps previously regulated on RHA section 10 lists, such as those for historic uses like fur trading.

"I have reviewed the [EPA Advisory] Subcommittee's findings and recommendations and believe that the majority's recommendations reflect an appropriate apportionment of responsibility between the states and tribes and the Federal government for the regulation of waters under a program administered by a state or tribe pursuant to [CWA] Section 404(g)," Assistant Secretary of the Army for Civil Works R.D. James says in the memorandum.

"In my view, implementing Section 404(g) in this manner adheres to the language of the statute and the intent of Congress when enacting this provision," he adds.

The timing of the guidance is significant as it comes as Florida, Arizona and potentially other states are preparing to submit applications to EPA and the Corps to assume 404 authority -- a move the Trump administration and its supporters are touting as part of their effort to speed infrastructure development.

The Corps' James emphasizes this point, saying in an Aug. 7 [news release](#) on the Army's website that the guidance "supports this administration's dedication to infrastructure by providing states and tribes the clarity they need to better balance their environmental protection mission with their economic development goals."

"In my view, implementing Section 404 in this clear and decisive manner not only adheres to the language of the statute and the intent of Congress when enacting Section 404(g), but it is also in the overall best interest of the Army and the regulated public," he added.

The memorandum marks the Corps' first formal position on a [2017 report](#) from EPA's National Advisory Council for Environmental Policy and Technology's assumable waters subcommittee, where all but one of the subcommittee members backed the majority recommendation that states seeking to oversee 404 permits should be able to regulate a host of waters.

The lone dissenter was William James, Army Corps national mining expert, who said the Corps should also retain authority over traditionally navigable waters.



EPA hosts forum about contaminated water in Security-Widefield
COLORADO SPRINGS, Colo. - The Environmental Protection Agency held a forum Tuesday night to discuss the per-fluorinated chemicals (PFC's) contaminating the water in Security-Widefield and Fountain.

It's thought the chemicals came from years of firefighting training at Peterson Air Force Base.

This is the third forum held by the EPA across the country in recent weeks. The idea is to learn about the impact PFC's are having in affected communities and how the agency can help better address the problem.

"What we learn today will be developed into a national action plan which will outline what changes may happen next," said Sarah Bahram, the EPA's director of safe drinking water.

"I think we've heard clearly that folks want the EPA to regulate PFC's in drinking water," she said.

Bahram said regulating will require establishing a maximum contaminant limit.

Families from across the state filled the conference room at Hotel Elegante in Colorado Springs.

"I want them to fix whatever they did," said Steve Patterson, who used to live in Security.

Patterson said nearly 20 of his family members who lived in the affected areas now have cancer.

"Everybody in our family that lived in that area ended up with cancer, but everyone who lives outside that area did not," he said.

Unfortunately, Patterson's story is not uncommon. Which is why many people supported the request to regulate a maximum contaminant limit of PFC's in water.

"Water is our life line and once it's polluted ... it's very hard to clean up," said Patience Paisley.

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